

May 5, 2005

## VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Meeting  
IP-Enabled Services, WC Docket No. 04-36**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("Commission") Rules, this letter serves to provide notice in the above-captioned proceeding of three *ex parte* meetings with the Commission staff. On May 4, 2005, the undersigned along with Jeffrey Citron, Chairman and CEO of Vonage Holdings Corp. ("Vonage"), Christopher Murray, and Cynthia Cheswick, also of Vonage, and Alfred Mottur of Brownstein Hyatt Farber, to meet with Commissioner Michael Copps and Jessica Rosenworcel, Legal Advisor to Commissioner Copps. The second meeting was with Commissioner Kathleen Abernathy and Lauren Belvin, Acting Legal Advisor to Commissioner Abernathy. The third meeting was with Commissioner Jonathan Adelstein, Scott Bergmann, Legal Advisor for Wireline Issues to Commissioner Adelstein, and Dionne McNeff, Special Assistant to Commissioner Adelstein.

During the meeting Vonage explained that it is ready, willing and able to provide full E-911 services to its customers nationwide. **However, in order to provision these services Vonage must first be given the ability to purchase nationwide access to the publicly funded 911 infrastructure so that it can offer these services.**

Vonage updated the FCC on the status of its commercial negotiations for access to the selective routers and other elements. Vonage commended Verizon for its voluntary cooperation in reaching an agreement with the company and developing a solution that will provide complete 911 for both fixed and portable devices with non-native telephone numbers. Vonage provided further updates on its negotiations with SBC and Qwest and highlighted that conversations with BellSouth have not progressed in any substantial fashion. Vonage stressed that without a mandated access to the 911 infrastructure Vonage will not be able to deploy nationwide VoIP E-911 services.

Vonage stressed that **the challenge in devising a VoIP 9-1-1 solution is similar to that faced by wireless carriers—VoIP service is inherently portable**, and customers may be using a telephone number that is not assigned to the geographic area of their current location. The existing wireline network is not designed to route 9-1-1 calls from “distant” telephone numbers, so an overlay system has to be developed for wireless carriers. Thus, to provide a complete 9-1-1 solution, Vonage needs (1) access to 9-1-1 selective routers at every location where one of its customers might use its service, which is to say to every selective router in the United States; and (2) access to the wireless overlay solution offered by telephone carriers and made available to wireless carrier – this includes the pseudo-telephone number (so-called “pANI”) codes used by wireless carriers to route their 9-1-1 calls. These elements are further described in Attachment B.

Vonage explained to Bureau Staff that CLECs are not able to provide 9-1-1 access for VoIP customers with out-of-area telephone numbers, either because the customer has chosen a “virtual” telephone number or because the customer is using the service while away from home. This is because CLECs do not have interconnection agreements that provide for access to the various network elements and pANI codes used by wireless carriers and necessary to provide access to facilitate 911 call delivery. Vonage offered further information on the lack of access to these elements and distributed Attachment C included herein.

Moreover, Vonage explained that even if CLECs did have access to these elements, many areas are without CLEC coverage. This includes most rural areas where CLECs are unable to obtain interconnection because of the exemptions granted to rural telephone companies. Thus **without allowing VoIP providers the ability to gain direct access to these network elements – much of rural America could be unable to receive true VoIP 911**. In fact, by the FCC’s own statistics, 21% of the zip codes in the country are served by zero competitive LECs.

Further Vonage explained that a CLECs are currently limited in their ability to offer 9-1-1 services to Vonage because CLECs do not offer 9-1-1 access as a standalone service, but only to users of their wireline communications services. Therefore, to gain access to CLEC 9-1-1 trunks, Vonage would have to buy telephone service from the CLEC, port existing telephone numbers to that CLEC, and disrupt its existing arrangements with its existing underlying carriers. Because no single CLEC offers nationwide coverage, Vonage would have to make arrangements with many different CLECs to achieve the maximum coverage, and even then (as noted above) there would still be unserved areas.

Although **Vonage does not anticipate that it will face the same issues that have made CMRS E-911 such a daunting challenge**, Vonage is quite certain that a nation-wide and industry-wide roll-out cannot take place in only a few months. Assuming that Vonage is granted direct access to the public 9-1-1 infrastructure, and recognizing that commercial contracts would first need to be negotiated and that administrative issues associated with provisioning are not fully within Vonage’s control—Vonage submits that it may be able to begin placing circuit orders within 90 days from contract execution. It has been Vonage’s experience that services are then delivered within 90-100 days after an order has been placed. Finally, to ensure the integrity of the circuits and the delivery of calls, Vonage would require another 90 days to test the

circuits. Of course absent any requirements on the LECs to provision these orders in a timely manner, these estimated timelines could take longer to provision. While these are Vonage's views, other providers may have other concerns. In this regard Vonage notes that the record is bereft of any evidence regarding what may constitute a sufficient roll-out period.

Finally, during the meeting Vonage cited the legal authority inherent in Section 1, 251(e)(3) and 47 CFR § 63.3001 to support the proposition that this Commission has clear authority to mandate LEC access so that IP enabled service providers can provision 911 services. This authority exists irrespective of how the FCC may wish to treat VoIP for regulatory purposes (*i.e.*, as "information services" or "telecommunications services"). The FCC has a clear statutory mandate under Section 1 of the Communications Act of 1934 to "promot[e] safety of life and property through the use of wire and radio communication." The Commission also clearly has sufficient ancillary authority to impose 9-1-1 obligations on Title II LECs whose cooperation is necessary for VoIP providers to offer the service.<sup>1</sup> Moreover, under Section 251(e)(3) and other statutes, the Commission has plenary authority over the use of the 9-1-1 code for emergency dialing, as the Commission explained when it initiated this proceeding.<sup>2</sup>

---

<sup>1</sup> The FCC's plenary jurisdiction over 9-1-1 obligations is evident from the legislative history of the 9-1-1 Act, which explains that § 251(e)(3) was Congress' response to the patchwork quilt of state emergency response systems in use for wireless telecommunications. *See Implementation of the 911 Act*, Notice of Proposed Rulemaking, 15 F.C.C.R. 17079, ¶ 6 (2000) (citing S. REP. 106-138, 106<sup>th</sup> Cong. 1<sup>st</sup> Sess., at 2 (1999) as describing the "lack of consistency" in "emergency wireless numbers" across the U.S.). Congress, therefore, tasked the FCC with implementing a national solution. *Id.*

<sup>2</sup> *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 53 (2004) ("[T]he Commission has statutory authority under Sections 1, 4(i) and 251(e)(3) of the Act to determine what entities should be subject to the Commission's 911 and E911 rules") (citing *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶ 13 (2003)).

Marlene H. Dortch

May 5, 2005

Page 4 of 4

Pursuant to the Commission's Rules, this letter is being submitted to the Secretary for filing in the above-referenced proceeding.

Sincerely,

/s/

William B. Wilhelm, Jr.

Counsel for Vonage Holdings Corp.

cc: Commissioner Kathleen Abernathy  
Commissioner Jonathan Adelstein  
Commissioner Michael Copps  
Lauren Belvin  
Scott Bergmann  
Jessica Rosenworcel  
Dionne McNeff